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ACTIVITIES OF THE TRANSNATIONAL CORPORATIONS AND MANAGEMENT DIVISION AND ITS JOINT UNITS

Implementation of the United Nations programme on transnational corporations

Report of the Secretary-General

SUMMARY

The present report provides an account of the implementation of the United Nations programme on transnational corporations by the Transnational Corporations and Management Division and its joint units, particularly since the eighteenth session of the Commission.

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INTRODUCTION

1. At its eighteenth session, the Commission on Transnational Corporations requested the Secretary-General to submit a report to the Commission at its nineteenth session on the implementation of the programme on transnational corporations, encompassing also the activities of the joint units established with the regional commissions. 1/ The present report was prepared in response to that request.

2. Chapter I reviews the evolution of the programme since its inception in 1974 and outlines its adjustments to the international economic environment and to the changing perceptions of Governments of the role of foreign investment in development. Chapter II presents the programme's major accomplishments in 1992. Chapter III draws attention to the programme's activities aimed at responding to new international challenges in the 1990s.

3. In addition to the present report, the Commission also has before it under the present agenda item the reports of the Secretary-General on experience gained in technical cooperation activities involving privatization and foreign investment (E/C.10/1993/10), on the universe of transnational corporations (E/C.10/1993/11), on the role of transnational corporations in South Africa (E/C.10/1993/13 and Add.1) and on the follow-up to the United Nations Conference on Environment and Development as related to transnational corporations (E/C.10/1993/7).

I. EVOLUTION OF THE PROGRAMME

4. The United Nations programme on transnational corporations was established in 1974 in response to a report prepared by the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations and in implementation of Economic and Social Council resolutions 1908 (LVII) and 1913 (LVII), by which the Commission and the United Nations Centre on Transnational Corporations were created as the focal points in the United Nations system for all matters related to transnational corporations and foreign direct investment. The programme focused, in an integrated manner, on furthering understanding of the nature and the economic, legal, social and political effects of the activities of transnational corporations; strengthening the negotiating capacity of host developing countries; and assisting in securing international arrangements for the operation of these corporations.

Analytical function

5. At its second session, the Commission identified a number of specific areas of international concern in which analysis would be desirable. They related in particular to the analysis of general trends in the operations of transnational corporations, the examination of various impacts of transnational corporate activities, research designed to strengthen national

negotiating capacities, studies of transnational corporations in specific areas and selected sectors, and activities related to international arrangements and agreements with respect to foreign investment and related flows. The recognition of the interrelationships among the economic, legal, social and political effects of the activities of transnational corporations resulted in a series of integrated studies on the role of these corporations in world development.

6. By the early 1990s, the programme's research was viewed as a major international source of knowledge and understanding on transnational corporations. The principal aim of the programme's research function is to analyse the role and economic impact of the activities of transnational corporations in the international economy. Within this broad thrust, the programme has focused on research issues of direct relevance to policy debates with regard to the role of transnational corporations. A major accomplishment of the research output of the Division has been to help demystify the phenomenon of transnational corporations and to gain a better understanding of the strengths and limitations of transnational corporations in promoting the integration of the international economy in general and in their contribution to the process of growth and development of the developing countries in particular. A reflection of the programme's impact is in the fact that many countries previously averse to transnational corporations now take a more objective view of the role of these entities in their development. In consequence, a wide spectrum of countries have shown willingness to assign a greater role to transnational corporations in the development of their national economies through various policy initiatives, including the liberalization of foreign direct investment laws and the privatization of State enterprises.

Advisory and training function

7. The programme's technical cooperation activities were initially designed and implemented to respond to the main concern of the programme's principal recipients, host developing countries, to learn effective techniques for regulating operations of transnational corporations in their territories.

8. During the 1980s, there was a relative deregulation of foreign direct investment in which Governments sought to make entry requirements less restrictive and to encourage investors by offering incentives, including easier repatriation of profits. The programme responded to this policy trend by providing requesting Governments with technical assistance in the reformulation of their policies, laws and regulations. By the late 1980s, the programme's advisory projects had affected about $20 billion worth of investment flows. The programme also advised Governments engaged in negotiating various joint venture arrangements to be less concerned with ownership considerations and to pay more attention to the issues of fiscal take and other benefits accruing to the host country. As a result, some major transactions in the natural resource sector and in other sectors were negotiated and renegotiated. The net benefit from the programme's advice for many developing countries was equivalent to tens of millions of dollars per transaction.

9. In the most recent years, Governments started to reconsider their policies of gradual deregulation in favour of those of internationalization of their economies and radical transformation towards increasingly private sector driven development. The programme swiftly adjusted its advisory work to counsel on the deepening of the deregulatory process and on the modes and procedures for attracting and promoting foreign investment. Technical assistance projects included the setting up of free economic zones, the launching of entrepreneurship programmes and the development of strategies for implementing privatization schemes. In the transitional economies, the programme not only assists in the formulation of foreign investment legal frameworks, but is also involved in the design of broader economic legal infrastructures (including property laws, company laws, contract laws, bankruptcy laws, income tax laws etc.) which are critical for creating an environment conducive to marketization and international business operations.

Information services

10. The establishment of a comprehensive information system has served the whole range of objectives of the entire programme of work and has also met information requirements of Member States. By the late 1970s, it had established a store of primary sources - electronic and hard copy - geared towards rapid retrieval to meet current needs, identified major obstacles to corporate information access and formulated proposals to improve transparency. It also embarked upon the preparation of various information products, such as company profiles and research surveys.

11. During the 1980s, the priorities of the comprehensive information system shifted from data collection to information analysis and service. This was motivated both by the increased availability on the market of electronic databases of corporate information and by a shift in the nature of the demand placed upon the system. As the programme gained recognition through its research and technical cooperation work, a growing number of end-users called on the information facilities for a variety of needs: evaluating partners in business deals, tracking emerging legislation, retrieving primary economic data, and locating model contracts and clauses. The links with the research and technical cooperation arms of the organization became even closer, with information becoming an integrated component of either activity. The information function of the programme helped Member States avoid entering into business relationships with dubious partners; conversely, it helped identify promising investment projects, evaluate and select suitable business partners, and frame equitable contractual arrangements.

12. During the 1990s, transnational business information services emphasized the transfer of information skills and capacity to Member States. The objective is to enable Member States to identify, manage and access information products and services in support of international business and investment activities. Work to this end has already begun with the publication of Transnational Business Information: A Manual of Needs and Sources. 2/ Further work will include the development and dissemination to the field of turnkey information systems covering legal, bibliographic and

investor information for direct local use, the development of local business information facilities and the training of information professionals.

Normative activities

13. At its first session, in 1975, the Commission decided to give priority among its various tasks to the formulation of a code of conduct on transnational corporations as a comprehensive international instrument dealing with the entire range of issues arising in relations between Governments and transnational corporations. The United Nations Centre on Transnational Corporations was requested to provide substantive support to the intergovernmental group entrusted with formulating the draft code.

14. In the 1970s, the Centre also served as the focal point of the Secretariat for the negotiations on an international convention on illicit payments in international business transactions. In 1979, a draft text was submitted to the General Assembly for adoption; the Assembly decided not to take any action on it.

15. In the 1980s, the negotiations on the code of conduct continued, though the scope of the work of the Commission and the Centre expanded considerably by that time and involved a wide range of issues relating to the role of foreign direct investment in world economy and the contribution of transnational corporations to national development. By 1990, the negotiations on the code of conduct failed to achieve a consensus, and the matter was referred to the President of the General Assembly. The President convened informal consultations on the code of conduct in September 1991 and July 1992. As a result of these consultations, the President of the General Assembly reported to the Assembly at its forty-sixth session that, in the view of delegations, no consensus was possible on the draft code. Delegations, however, were of the view that the changed international environment and the importance attached to encouraging foreign investment required a fresh approach to be taken, which could include the preparation of guidelines and/or any other international instrument on foreign investment at the next meeting of the Commission.

Joint units with the regional commissions

16. In 1975, in pursuance of Economic and Social Council resolution 1961 (LIX), joint liaison and support units were established between the Centre and the regional commissions. These units have the responsibility of preparing case-studies on economic, social and institutional aspects of transnational corporate activities in their respective regions.

Transnational corporations and the environment

17. Since the mid-1980s, the programme has been involved, in cooperation with transnational corporations, in the development of awareness of sustainable development. A series of Criteria for Sustainable Development Management, prepared by the Division, were among the first international initiatives to

establish trans-sectoral guidelines for environmental management of corporations, and non-binding environmental standards for environmental management. A set of recommendations for the tasks and responsibilities of transnational corporations, Governments and international organizations in sustainable development were produced and presented to the Preparatory Committee for the United Nations Conference on Environment and Development. The recommendations synthesized existing intergovernmental resolutions, conventions and declarations, corporate policy statements and practices, trade association guidelines and guidance from expert advisers in business, academia, Governments and non-governmental organizations. The Division also conducted the Benchmark Corporate Environment Survey (ST/CTC/SER.C/1-5), developed Options to Facilitate Transfer of Environmentally Sound Technologies to Developing Countries on Favourable Terms and undertook an extensive project on environmental accounting for sustainable development.

Transnational corporations in South Africa

18. The programme has been responding to a number of resolutions adopted by the General Assembly, the Economic and Social Council and the Commission on Transnational Corporations regarding the activities of transnational corporations and apartheid in South Africa. The relevant activities included the preparation of analytical studies on the role of transnational corporations in the South African economy, their disinvestments and non-equity links; dependence of the South African economy on international trade, foreign investment and foreign finance, and the effectiveness of sanctions; the implementation of United Nations decisions and recommendations regarding sanctions and disinvestments and measures available to the South African Government to attract foreign investments. In an effort to mobilize public opinion towards the eradication of apartheid, two public hearings on the activities of transnational corporations in South Africa and Namibia were held, in 1985 and 1989. The hearings, each conducted by a panel of eminent international personalities, produced a series of recommendations for concerted international action towards the eradication of apartheid, including technical assistance and educational programmes for South African nationals and organizations to equip them for active participation in the governance of a post-apartheid South Africa. The Economic and Social Council, in its resolution 1992/34, reaffirmed that Governments, entrepreneurs and enterprises, including transnational corporations, had contributed to the demise of the apartheid system, and invited them to give their full and concerted effort to that end. The Division has launched a programme of technical assistance on foreign investment and other policy options for post-apartheid South Africa in response to a request from the African National Congress (ANC). The overall objective of the programme is to assist ANC in developing its institutional and policy-making capacity in the areas of foreign direct investment and development management so as to participate fully and effectively in the governance of a new non-racial South Africa. The programme has been designed to review investment-related laws and regulations in South Africa, to prepare policy-oriented sectoral studies on the South African economy and to train through workshops ANC officials and other South African nationals.

Economies in transition

19. The programme was among the first in the United Nations system to respond to the challenge of the profound transformations occurring in the late 1980s in the countries of Central and Eastern Europe and the former Soviet Union. The programme's major thrust in the region is in the strengthening of national capacities for effective assimilation of foreign direct investment. The programme, being scarce in resources, concentrated on activities with a "multiplier effect", which could reach large groups of trainees, be self-sustained within a short period of time and have the most far-reaching impacts. This approach normally required the identification of a strong local counterpart, such as a government agency, major city authorities, a university or a professional association, to join forces in implementing specific projects. As a result, local self-supporting networks have been built in such areas as accounting, entrepreneurial development and joint venture negotiations. In recognition of this innovative and resourceful role, the Division, as part of the Department of Economic and Social Development, was assigned to take the lead in coordinating the United Nations system's response to overall assistance to the countries of the former Soviet Union. The Director of the Division serves as the chairperson of an inter-agency task force on the newly independent States. A task force organizes the participation of the United Nations system in the three international ministerial-level coordinating conferences, and its mechanism has acted as a clearing-house for the exchange of information on United Nations activities in the region.

II. IMPLEMENTATION OF THE PROGRAMME IN 1992

A. Research and policy analysis

20. In 1992, the research activities of the Division bore directly on policy debates concerning the role of transnational corporations (for a list of the material published in 1992, see annex II). In this vein, in July 1992 the Division published the World Investment Report 1992: Transnational Corporations as Engines of Growth, 3/ the second in an annual series begun in 1991. Against the backdrop of the finding contained in the Report that the decade of the 1980s has been characterized by growth of foreign direct investment at a rate much faster than that of world output, domestic investment and exports, the Report undertook a systematic examination of how transnational corporations could contribute to the growth of developing countries through capital formation, technology transfer, human resource development and trade and what policy imperatives as well as structural conditions needed to be fulfilled in order to maximize the net contribution of transnational corporations in these respects. In addition, the Report suggested that a new perspective should be taken regarding the importance of foreign direct investment and transnational corporations in international transaction. The Report was well received and referred to in a number of issues of newspapers and academic publications.

21. A new development in the world of transnational corporations is the rapid growth of such corporations from developing countries. The literature on the subject of third world transnational corporations has focused almost exclusively on their impact on other host developing countries. In view of the fact that these corporations can also have a positive impact on the development of their own home countries, a study on the subject entitled Third World Transnational Corporations and Their Impact on Home Developing Countries (ST/CTC/133) has been finalized. It examines how transnational corporations from the developing countries can make a contribution to their home economies through, inter alia, access to technology, skills and export markets. The Uruguay Round of multilateral trade negotiations has involved policy debates concerning the role of transnational corporations in several areas. One of these relates to trade-related investment measures. To promote a better understanding of the issues involved with regard to this subject, the Division recently published a study entitled The Impact of Trade-related Investment Measures on Trade and Development, which highlights the need for subjecting fiscal as well as trade incentives to a common regime to avoid distortions in international locational patterns of investments.

22. Among other issues of policy relevance dealt with in the research activities of the Division are those relating to the impact of government policies on foreign direct investment (Government Policies and Foreign Direct Investment), 4/ debt-equity swaps (Debt-Equity Swaps and Development, forthcoming) and transfer of new management practices to developing countries (Transnational Corporations and the Transfer of New Management Practices to Developing Countries).

23. The establishment of the European Common Market is a significant development in the international economy, with major ramifications for the activities of transnational corporations. Accordingly, the Division has completed a research study entitled From the Common Market to EC 1992 - Regional Economic Integration in the European Community and Transnational Corporations, which examines, inter alia, the implication of this development for foreign direct investment flows to the developing world as well as to the countries in Central and Eastern Europe.

24. The major requirement for an objective understanding of the role of transnational corporations in the international economy is access to data. To meet this need, the Division has already published two volumes, entitled World Investment Directory 1992, vol I, Asia and the Pacific, 5/ and World Investment Directory 1992, vol. II, Central and Eastern Europe. 6/ The other volumes, on countries that are members of the Organisation for Economic Cooperation and Development (OECD) and on Latin America and the Caribbean, are in the process of finalization. These volumes constitute the only database that provides analytical information on foreign direct investment flows and stocks, their sectoral and geographical compositions, sales and assets of foreign affiliates and a number of other variables.

25. As a complement to the statistical information noted above, the Division has embarked on the publication of 20 volumes of analytical studies entitled

United Nations Library on Transnational Corporations, each of which is a collection of seminal works on various aspects of the role of transnational corporations, such as transnational corporations and technology transfer; transnational corporations and employment; transnational corporations and exports; transnational corporations and transfer pricing; transnational corporations and economic integration; and transnational corporations and marketing structure. Four volumes in this series have already been published (see annex II).

26. Recognizing that in recent years more than 50 per cent of foreign direct investment has been directed to the services sector, the Division has placed a major emphasis in its research programme on the role of foreign direct investment and transnational corporations in services. A major research study, Transnational Services Corporations and Developing Countries - Impact, Policies and Options (ST/CTC/131), has been completed and is being reviewed and finalized for publication. A volume on transnational corporations in services has been completed for the United Nations Library on Transnational Corporations, bringing together major contributions to the literature on the conceptual, empirical and policy-related aspects of this relatively neglected area. The Division also continued its work on the directory of the largest service industries, covering several industries not included in volume one of the Directory of the World's Largest Service Companies. Information from volume one of the Directory and other publications of the Division was analysed in an empirical analysis of determinants of foreign direct investment by transnational service corporations and published under the title The Transnationalization of Service Industries (ST/CTC/SER.A/23). To throw light on the impact and complications of the changing tradability of services owing to the development and proliferation of information technology involving the interface of computers and telecommunications, the Division has initiated a case-study on the banking industry. Most of the research on the project has been completed and will be published in 1993.

27. As a follow-up to research in the area of foreign direct investment and transnational corporations in the services sector, the Research and Policy Analysis Branch, together with the World Bank, is implementing a new United Nations Development Programme (UNDP)-funded project on expansion of foreign direct investment and trade in services (EFDITS project). The objective of EFDITS is to assist developing countries in assessing the gains that countries may derive from opening their services markets to foreign services providers, either through trade or through investment. One expected outcome of the liberalization of international transactions in services is increased productivity of other goods and services industries, increased exports and improved growth and development opportunities for the economy at large. The first phase of the project, completed during 1992, included the preparation of a technical assistance-oriented handbook dealing with issues related to the liberalization of foreign direct investment and trade in services. During the latter part of 1992, the project entered its operational phase, in which assistance will be provided to selected developing countries on a pilot basis. At the pilot stage of the project, during 1992, EFDITS was already implemented in Uruguay and Tunisia and discussions are under way for two additional countries to participate.

28. With a view to promoting a better understanding of the role of transnational corporations, the Division has organized or co-sponsored a number of workshops involving participation of policy makers, academicians and transnational corporations executives. Three such workshops were held in 1992 - one at Princeton, New Jersey, for delegates to the Second Committee, and two others in Brazil and Chile, the latter, co-organized with the Inter-American Development Bank and the Economic Commission for Latin America and the Caribbean (ECLAC), being the first regional symposium on transnational corporations and development held in recent times in that region.

29. As to the future direction of research, the Division will continue to focus on activities that are of policy relevance to countries, in particular the developing countries. At the present time, a number of research activities are in progress that should contribute to more effective policy formulation with regard to strengthening the positive contributions of transnational corporations to growth and development. Among these activities are those relating to transnational corporations and industrial restructuring, and transnational corporations and manufactured exports from developing countries.

30. The Division contributed to the 1992 United Nations Conference on Environment and Development by submitting to its Committee on Technology Transfer the results of the Benchmark Corporate Environment Survey (ST/CTC/SER.C/1-5) and the reports on Emerging Trends in the Development of International Environmental Law at the Regional and Global Levels: Implications for Transnational Corporations, Climate Change and Transnational Corporations: Analysis and Trends, 7/ Transnational Corporations and Industrial Hazards Disclosure, 8/ and Options to Facilitate Transfer of Environmentally Sound Technologies to Developing Countries on Favorable Terms.

31. In 1992, a series of case-studies on the activities of transnational corporations in Africa were prepared by the Joint Unit established with the Economic Commission for Africa (ECA). They included such technical papers as Role of Transnational Corporations in the Transfer of Biotechnology in Africa: Case-Study of Tanzania (E/ECA/UNCTC/87); Transfer and Development of New Technologies in Africa: Case of Renewable Energies in Burundi (E/ECA/UNCTC/83); Countries of Southern Africa and Foreign Direct Investment: the Role of Transnational Corporations in the Services Sector of Lesotho (E/ECA/UNCTC/86). Possible impacts of the European single market on European investments in Africa are discussed in the study on Foreign Direct Investment and Related Flows from the EC countries into African Countries: Trends and Issues (E/ECA/UNCTC/85). The Joint Unit in Addis Ababa also completed a Manual on Evaluation of Hotel Contracts (E/ECA/UNCTC/84), and a paper entitled "African multinational enterprises in Central Africa" (E/ECA/UNCTC/82), which examines national experiences in the subregion relating to negotiating and operating African joint enterprises as alternatives to transnational corporations.

32. The Joint Unit with the Economic Commission for Latin America and the Caribbean (ECLAC) continued its work on a global overview of the industrial

restructuring process in Latin America based on case-studies of Brazil, Chile, Colombia and Mexico. The Joint Unit issued technical papers entitled "Increased international competition in a transnational corporation-centric world" (DSC/2), "Incorporation or marginality of developing countries" (DCS/4) and "The automobile sector as epicentre of the transnational shake-up". The Unit also published a study entitled "Transnational corporations and manufacturing sector in Brazil", which examines the actual and potential role of Brazilian subsidiaries of transnational corporations in the modernization of the Brazilian manufacturing sector and its capacity to adapt to the world's industrial revolution and increased international competition.

B. Advisory services and training

1. New institutional environment for technical cooperation activities

33. The restructuring that took place during 1992 provided the Division with a greater pool of expertise for the implementation of technical cooperation projects. At the same time, projects delivery was adversely affected by (a) a slow start of the programme cycle; (b) problems experienced by UNDP in implementing its programme approach; (c) the significant increase in both national execution and national implementation and (d) non-access of the Advisory and Training Branch to technical support services at the programme level (TSS-1) resources. Despite these difficulties, the programme on transnational corporations was able to execute a large number of technical cooperation activities in 1992. Particular emphasis was placed on the areas discussed below.

2. Economic reform and marketization

34. The shifts in economic policies of many developing countries and countries of Central and Eastern Europe continued during 1992. Policy makers in both the public and private sectors focused on policies of integration into a global market economy in which liberalization of trade and investment were viewed as the two pillars of the new global economic structure. A number of developing countries promoted policies that encouraged private sector development. The role of the State as a provider of goods and services was gradually reduced, and the private sector was granted necessary incentives to raise capital, introduce cost-effective production technologies and create employment.

35. Thus, the reform of various aspects of investment policies served as an environment in which the Division executed its technical assistance projects during the reporting period.

36. In Latin America and the Caribbean, a series of important activities in the area of privatization were implemented. The Division undertook a five-day mission in Honduras, to advise the Government on the privatization of selected

services of the State-owned telecommunications enterprise. In Peru, the Division collaborated with the State-owned enterprise IPEN to identify potential investors for the production and marketing of radio isotopes for medical applications. It also assisted IPEN in launching public requests for bids, in evaluating the bids and negotiating the contracts with the winners of the bids, and in setting up a monitoring system for ensuring that contracts were being performed as agreed. In Cuba, the Division assisted the Government in promoting foreign investment in and export of health-care products and facilities.

37. In the Caribbean, the second phase of a hotel privatization project was completed in Antigua and Barbuda. The project involved the preparation of a valuation report for the Government on the Ramada Renaissance Royal Antigua Hotel. The report is currently being used by the Government to negotiate with prospective investors who might wish to purchase the hotel.

38. In Africa, the Division is implementing a three-year programme to improve the capacity of governmental agencies of Mozambique to negotiate effectively with transnational corporations, in particular through developing the appropriate legal and institutional framework for foreign investment. In this regard, the Division is redrafting the country's investment legislation, mining legislation and legislation for the setting-up of a free economic zone. The Division is also developing an appropriate fiscal regime for mining and is assisting the Government in setting up a national investment centre.

39. In North Africa, the Division was particularly active in Algeria and Tunisia. It assisted the Government of Algeria, which intends to attract more foreign investors and to give the private sector a bigger role, in drafting a new foreign investment law and the accompanying implementing regulations. The law is prepared in such a way that the Government's role in the overall management of the economy should not be minimized. In Tunisia, the Division was requested to draft a Code unique, which represents the consolidation of the existing sectoral codes. The project benefited from a two-day brain-storming meeting with local experts on the salient features of the Code unique.

40. In the Asia and Pacific region, assistance was provided to members of the Indian Ocean Commission to prepare a strategy paper on the harmonization of foreign investment and development policies. A new foreign investment code was drafted for Vanuatu which was submitted to the country's Council of Ministers for consideration. An advisory paper that focused on the policies and regulations for technology transfer in developing countries was prepared for Malaysia, and a draft model petroleum agreement was formulated for Fiji. The Government of Tonga was assisted in renegotiating a contract with Cable and Wireless for the provision of telecommunications services, and the Government of Samoa was assisted in reviewing the financial performance of Polynesian Airlines. The latter activity was undertaken in collaboration with the International Civil Aviation Organization (ICAO).

41. The Division continued its activities in Central and Eastern Europe. As a follow-up to the work on the legal infrastructure of Albania, an advisory mission was dispatched to that country to counsel senior officials in the Ministry of Foreign Economic Relations on foreign investment and private sector development. In addition, a review of a petroleum exploration contract was undertaken. In Romania, the Division launched a project with the National Agency for Privatization to assist it in initiating national privatization and restructuring programmes. The project is being implemented through a chief technical adviser who has been placed in the country. In the Baltic republics of Latvia, Lithuania and Estonia, the Division initiated a project to develop markets for those countries' available scientific resources.

42. In East and Southern Africa, the Division is involved in integration projects for the Preferential Trade Area for East and Southern Africa (PTA) and the Southern African Development Council (SADC). These activities will reduce the costly incidence of member States engaging in competitive bidding to attract foreign investors.

43. The Division also continued to assist in the process of harmonization of regional investment laws, policies and regulations. In this regard, it participated in the formulation of a project on trade and investment relations between the Organization for Eastern Caribbean States (OECS) and Puerto Rico and between OECS and the United States Virgin Islands, the main objective of which is to devise ways and means of increasing trade and investment between the OECS States and its two island neighbours.

3. Human resources development

44. Human resources development remains a central component in the Division's technical cooperation activities. Training projects stress the development of the indigenous capacity of both public and private sector officials of developing countries and transitional economies.

45. In Africa, a workshop on international commercial arbitration and developing negotiating skills was organized in Ghana for officials that deal with foreign investment, project appraisal and public enterprise management. In Sierra Leone, a workshop on privatization, negotiations and ethics focused on business ethics and corrupt practices. In Uganda, the Division organized a major workshop for senior officials from both the public and the private sectors on foreign investment and negotiating joint ventures. The workshop was particularly well received because Uganda is currently in the process of implementing measures to attract foreign investors, including promulgating a new investment code and a new mining act. A workshop for governmental and private sector officials was held in Zanzibar within the context of a comprehensive change in economic policy at both the levels of the Federal Government of the United Republic of Tanzania and the Island Government of Zanzibar. The change calls for a large pool of well-trained local experts who will be implementing the national policy of transformation to a market economy. There was also a workshop in Nigeria on fraud in international

banking and financial transactions. The workshop brought together prominent international advisers as well as local and regional experts to discuss fraud in commercial banking and securities markets, and money laundering and its links to international drug trafficking.

46. In the Asia and Pacific region, the Division organized a three-day round table in Pakistan on foreign direct investment, with a specific focus on investment flows from the East Asian economies. In the Philippines, a round table was held on the subject of build-operate-and-transfer (BOT) for senior officials in the public and private sectors. The workshop sensitized the participants to the main characteristics of BOT projects. On-the-job training on the legal aspects of natural resources and other projects is being provided to officials at the Attorney-General's Office in Papua New Guinea.

47. In Latin America, several on-the-job training activities were conducted by the Division's experts on advisory missions. In addition, a workshop was organized in Cuba on intellectual property rights, and a series of round tables were held in Colombia to discuss economic and legal issues related to the Government's new environmental protection policy.

48. In the Caribbean region, a workshop on negotiating joint ventures was held in Jamaica in collaboration with that country's investment promotion and economic development agency, JAMPRO, and UNDP. It examined various forms of foreign investment and focused more specifically on the financial, economic and legal aspects of negotiating joint venture agreements. Presentations were also made on technology transfer and management contracts, and on the activities of transnational corporations in agri-business, mining, manufacturing and service industries.

49. In Central and Eastern Europe, a number of significant training activities were undertaken. A workshop on privatization was held in Hungary. It focused on issues related to the internationalization of the Hungarian banking sector, and on the training of financial experts and bank managers. In Romania, the Division contributed to a workshop organized by the Economic Commission for Europe (ECE) for Romanian officials on international industrial contracts. The Division also participated in the first Uzbek-Euro-American symposium on international law and business, in conjunction with a preliminary mission on drafting an investment law for Uzbekistan.

50. The Division also continued to implement entrepreneurship workshops under its EMPRETEC programme. The two workshops held in Zimbabwe involved private sector groups from advertising, printing, textiles, electronics, steel production and construction businesses. The experiences of EMPRETEC in other African countries, particularly in Ghana and Nigeria, and in Latin America continue to grow and to enrich the new workshops.

51. The training workshops were supplemented by study tours sponsored by the Division. A group of senior officials from the Investment Centre of Ethiopia visited selected countries and enterprises. Another Ethiopian official attended a seminar in Washington, D.C., on joint venture negotiations. A

study tour for officials at the National Directorate of Tourism of Mozambique was arranged. These officials visited tourist enterprises of Kenya where they discussed a number of policy issues such as the safeguarding of an ecological and environmental balance in the development and implementation of a tourism policy. Officials from Ghana and Sierra Leone visited Headquarters for an in-house briefing on investment appraisal and public enterprise management. The Division also arranged for a group of Romanian and Bulgarian government officials responsible for privatization programmes to travel to Chile to learn from that country's privatization experiences.

4. Environment and natural resource management

52. The growing concern of the international community about the issue of sustainable development is reflected in recent efforts to establish global environmental protection standards (see report of the Secretary-General on follow-up to the United Nations Conference on Environment and Development as related to transnational corporations (E/C.10/1993/7)). Technical assistance in this area is vital for developing countries and countries in transition, which have limited capacities and experiences and expertise required to define and enforce internationally consistent norms and standards. The Division undertook a number of technical assistance activities on foreign investment and industrialization in which the adoption of environmental safeguards had been a central concern. Some recent activities focused specifically on environmental protection and sustainable development.

53. In Latin America, an international legal environmental expert worked with government officials in Colombia on the country's new environmental protection policy. It involved a consideration of economic and legal measures aimed at protecting the environment within market-driven mechanisms. In Ecuador, the Division, jointly with the Government and private sector representatives, drafted a law for environmental protection in respect of hydrocarbons. In Nicaragua, the Division, in collaboration with the Government's National Energy Institute, developed environmental protection regulations for the hydrocarbons sector as they relate to foreign investment projects.

54. In the Caribbean, the Division reviewed an investment proposal to set up a plant in Grenada to manufacture ethanol from bagasse. The review showed the difficulty of generating sufficient tropical waste that could be utilized in the conversion process and pointed out the enormous cost of producing the ethanol. In Grenada, the Division examined a proposal for the establishment of a battery manufacturing plant, and determined that the project was viable provided lead emission standards were set by the Government and agreed to by the investor.

55. Important environment-related activities were undertaken in the Asia and Pacific region. The Division drafted the Solomon Islands Environmental Law, which is due to be ratified by Parliament in 1993. In Papua New Guinea, several missions were undertaken to provide continuous advice to the Government on negotiations with the mining company, Kennecott, for the lease

of the Lilir Gold Mining deposit. The Government of that country was also advised about outstanding issues in negotiations with Chevron, Mobil Oil and British Petroleum on petroleum development. In Bangladesh, assistance was rendered to the Government in connection with the negotiations on setting up a joint venture - the Kafco Joint Venture Petro-Chemical Fertilizer Project - which is designed to convert the country's natural gas into fertilizer. The Division advised the Government on the legal and financial aspects of this project, the total investment cost of which would exceed $450 million. Most of that amount was expected to be financed by overseas investors and export credits.

56. In Africa, the Division continued to provide assistance to the Government of Angola in the natural resources sector. Recently, a gold-mining exploration and development contract was reviewed for the Government of the United Republic of Tanzania. In Sierra Leone, the Division drafted the country's Mines and Minerals Act. Assistance is currently being provided to that country in the drafting of a new Mineral Oil Act, which covers such issues as the exploration, mining and marketing of mineral oil resources, both offshore and onshore.

57. In Mozambique, in cooperation with the World Tourism Organization (WTO) and the country's National Directorate for Tourism (DINATUR), the Division has undertaken a review of the legislation pertaining to the tourism sector. The project's objective is to introduce an effective legal framework to regulate and monitor local and foreign investment, and to set out guidelines on the environmental impact of new investment in tourism. In this regard, a seminar was held to discuss the country's tourism strategy and related legal and environmental issues.

58. The Division also supported a meeting of the Advisory Group on Environmentally Sound Development of Oil and Gas in Russia, which was held in Vienna from 2 to 4 August 1992. The meeting, which brought together officials from the Ministries of Ecology, Natural Resources, Fuel and Energy of the Russian Federation, representatives of transnational corporations and oil contractors and of non-governmental organizations, examined ways and means of promoting oil and gas exploration, production, transportation and use, while minimizing environmental damage.

5. Private sector development and privatization

59. The Division continues to encourage the fostering of close linkages between the public and private sectors, particularly by counselling Governments on changes necessary to facilitate private sector participation. At the same time, bringing about such changes should be gradual. In some developing countries, government policies that favour private sector growth may give rise to serious ethnic problems because of private sector dominance by one ethnic group. A balanced approach to designing and implementing respective policies is essential for these countries to continue pursuing the path of development and stability.

60. Many countries in Africa are about to undertake large-scale privatization and divestiture programmes. These programmes require careful planning to be effectively implemented. The Division has provided advice in this area to the Governments of Kenya, Uganda and the United Republic of Tanzania. The Division developed specific recommendations with regard to individual countries' privatization programmes. In the United Republic of Tanzania, such recommendations took into account the concerns and needs of the Government of the United Republic of Tanzania and the Island Government of Zanzibar, and were made as a part of the broader UNDP programme of private sector development.

61. In Sierra Leone, the Division assisted the Government in preparing promotional material to market the Freetown International Conference Centre as a major conference facility in West Africa. The Government of the Gambia was assisted in reviewing draft bidding contracts for the management leasing of services provided by the Gambia Utilities Corporation, which included legal and financial evaluations of the contract's documents. The Division also undertook a valuation of the Grand Hotel du Bamako which resulted in a set of recommendations to the Government with regard to its privatization.

62. Within the Division's EMPRETEC programme for Zimbabwe, activities were carried out in support of the Government's efforts to stimulate employment creation, investment, technology transfer and exports through the development of small and medium-sized enterprises. These activities help to create indigenous entrepreneurship and strengthen the Zimbabwe Investment Centre's capacity to attract foreign investment and to generate profitable projects in priority sectors. The programme fosters linkages between small and medium-sized enterprises and large national enterprises, and with transnational corporations. It also assists in stimulating cross-border joint ventures within the Southern African region.

6. Assisting tax reforms

63. The Division, together with the Tax Executives Institute, co-sponsored a symposium on taxation of foreign investment in Central and Eastern Europe, which was held in New York in June 1992. The symposium discussed concrete questions of tax policies that affect foreign investors in the region, including in the Newly Independent States, and produced a frank exchange of views on the type of tax measures that would attract additional foreign investment to those countries. Practical recommendations were made regarding further modernization of tax regulations in the region that may have positive impacts on national law-making, negotiations of double taxation treaties and the conclusion of individual contractual arrangements.

C. Information activities

64. During the past year, the information system on transnational corporations continued to provide products and services in the areas of corporate information; aggregate economic and financial information; laws, regulations and policies, contracts and agreements; industries and sectors; and business reference. It also expanded the range of topics on which information services are provided. The restructuring of the Secretariat resulted in increased demands being placed on the information-on-demand component of the system, as this was recognized as a comprehensive repository capable of serving expanded needs. Work was begun, in cooperation with other parts of the Department, on coordinating the provision of information services, with the goal of expanding services and realizing economies.

65. Particular effort was devoted to strengthening the legal component of the information system. As numerous countries move towards liberalization of investment and market activities, new legislation and regulations must be drafted and put in place and contractual arrangements must be negotiated or reformulated. Access to a store of legal and contractual information pertaining to investment and transfer of technology can facilitate that process. To facilitate that access, the Division has built a database and issued an inventory of investment contracts. It has subscribed to the largest international electronic information service on law, and accesses it regularly to retrieve (download) full-text investment laws and legislation of many countries of the world. It also uses it to track legal news and emerging legislation and feed the information into the technical cooperation and policy research branches. The Division has begun an inventory of current full-text investment legislation available in-house, or from electronic information services, or from cooperating research institutions. The emphasis is on timeliness, to meet expanding demands for this type of information.

66. The store of corporate information continued to expand: data extracted from commercial sources was supplemented by in-house research to support policy analysis work. Particular effort was devoted to tracking and measuring the expanding universe of transnational corporations, and defining the characteristics of the largest transnational corporations.

67. The pilot phase of an information network on foreign investors and investment services, FIND, was launched. The project's objective is to enhance the flow of information on investment opportunities and to match investors and projects. Early returns of a survey indicated sustained interest in the network on the part of national investment services and medium-sized companies.

Table 1. Trust Fund of the United Nations Transnational Corporations and Management Division (general plus earmarked): income, 1988-1992

(United States dollars)

	1988	1989	1990	1991	1992
Contributions received					3 479 209 a/
Belgium	-	-	-	-	80 555
Chile	-	-	-	-	1 000 b/
China	20 000	20 000	20 000	20 000	20 000
Denmark	116 081	136 668	176 414	239 337	164 337
Finland	124 595	118 287	175 263	262 182	-
France	64 516	67 742	80 000	71 795	77 778
Germany	54 768	-	-	-	-
Italy	1 713 903	1 499 985	-	-	-
Japan	81 600	-	230 000	-	-
Malaysia	-	-	12 000	-	-
Netherlands	74 813	70 320	79 260	341 887	175 475
Norway	224 333	215 641	381 045	325 083	332 889
Poland	-	-	6 500 c/	13 743 d/	14 250 e/
Sweden	249 688	247 893	529 270	-	-
Switzerland	185 185	200 669	413 463	212 570	389 603
Zaire	500	500	1 000	-	-
Zambia	-	636 b/	-	-	-
Total contribution	2 909 982	2 578 341	2 104 215	1 486 597	1 255 887

Note: A dash (-) indicates that the amount is nil or negligible.

a/ Unaudited opening balance.

b/ Pledged, but not yet received.

c/ Contribution in non-convertible local currency, converted into dollar value at 9,310 zlotys per dollar.

d/ Contribution in non-convertible local currency, converted into dollar value at 10,915 zlotys per dollar.

e/ Contribution in non-convertible local currency, converted into dollar value at 10,526 zlotys per dollar.

Table 2. Total extrabudgetary resources and disbursements of the general and earmarked trust funds and UNDP, a/ 1992 b/

(United States dollars)

	1992 c/
Total resources	8 180 895
Total disbursements, of which:	5 739 254
Trust funds b/	2 815 494
UNDP	2 923 760

a/ All expenditures relate to foreign investment.

b/ Unaudited.

c/ Preliminary figures.

Table 3. Expenditures on workshops and other training activities, 1992 a/

(United States dollars)

	General and earmarked trust funds	UNDP b/
AFRICA	191 384	371 532
Ghana	18 500	180 000
Mozambique	-	12 997
Nigeria	35 815	-
Senegal	38 373	-
Sierra Leone	-	35 783
Uganda	71 196	-
Zanzibar	4 500	-
Zimbabwe	-	141 952
Regional	23 000	800
ASIA AND THE PACIFIC	268 804	284 221
Cambodia	33 396	-
China	165 140	66 683
Democratic People's Republic of Korea	-	35 670
Japan	16 600	-
Mongolia	-	33 916
Pakistan	41 475	-
Papua New Guinea	-	134 460
Vanuatu	12 193	-
Regional	-	13 492
CENTRAL AND EASTERN EUROPE	68 719	18 617
Romania	-	18 617
Uzbekistan	5 650	-
Regional	63 069	-
LATIN AMERICA AND THE CARIBBEAN	108 776	4 667
Brazil	11 838	-
Chile	68 439	-
Jamaica	23 999	-
Venezuela	-	4 012
Regional	4 500	655
INTERREGIONAL	255 767	
TOTAL EXPENDITURES	893 450	679 037

Note: A dash (-) indicates that the amount is nil or negligible.

a/ Preliminary figures.

b/ All expenditures relate to foreign investment.

Table 4. Extrabudgetary expenditure on advisory projects, 1992 a/

(United States dollars)

	General and earmarked trust funds	UNDP b/
AFRICA	106 992	908 206
Algeria	1 346	21 600
Angola	-	87 549
Egypt	5 734	6 425
Gambia	6 000	-
Ghana	-	58 020
Liberia	1 400	-
Mali	19 883	-
Mozambique	-	191 608
Nigeria	2 243	222 935
Seychelles	2 400	-
Sierra Leone	-	135 194
Tunisia	35 944	-
Uganda	7 316	-
Zimbabwe	-	140 000
Regional	24 726	44 875
ASIA AND THE PACIFIC	108 035	113 137
Bangladesh	8 298	-
China	-	1 351
Democratic People's Republic of Korea	-	23 415
Fiji	8 000	-
Malaysia	5 600	-
Mongolia	1 915	4 500
Myanmar	4 000	3 627
Nepal	-	650
Pakistan	-	7 058
Papua New Guinea	28 054	-
Philippines	-	33 020
Tonga	16 500	-
Regional	35 668	39 516
CENTRAL AND EASTERN EUROPE	6 949	176 492
Czechoslovakia	1 400	
Hungary	5 549	-
Romania	-	176 492

Table 4 (continued)

	General and earmarked trust funds	UNDP b/
LATIN AMERICA AND THE CARIBBEAN	80 833	211 650
Antigua and Barbuda	18 526	-
Argentina	-	35 292
Bolivia	3 150	-
Brazil	-	32 507
Chile	-	1 351
Colombia	10 405	-
Grenada	2 700	-
Honduras	20 102	-
Mexico	2 128	-
Nicaragua	1 700	-
Peru	2 049	-
Uruguay	-	90 833
Venezuela	-	25 636
Regional	20 073	26 031
INTERREGIONAL	37 359	697 458
TOTAL EXPENDITURES	340 168	2 106 943

Note: A dash (-) indicates that the amount is nil or negligible.

a/ Preliminary figures.

b/ All expenditures relate to foreign investment.

III. REDEFINING THE PROGRAMME TO MEET NEW INTERNATIONAL CHALLENGES

68. In 1992, the Secretary-General initiated a reorganization of the United Nations aimed, inter alia, at strengthening an integrated approach to development. The redefinition of mutually supportive and reinforcing programmatic linkages among research, policy analysis, operational activities and related information support has become a basic criterion for restructuring. The creation of the Transnational Corporations and Management Division within the Department of Economic and Social Development merged the United Nations Centre on Transnational Corporations with the Division of Development Administration, thus building on existing complementarities between the programmes on the public sector (administration and finance) and the private sector (transnational corporations). The main thrust of the Division became to respond to the challenge of strengthening national capabilities and supporting the move to market structures. Some of the new priorities of the programme's activities are outlined below.

A. An enabling environment

69. For the countries that are currently undergoing policy changes in transiting to a market economy and in creating a private sector, legal frameworks relating to investment are vital in ensuring continuity and stability of the change while exercising a pragmatic approach and highlighting business opportunities.

70. Legal frameworks for investment policies normally rely on a variety of legislative instruments that detail incentives, terms and conditions regarding the entry and operational aspects of investment projects. In many developing countries, however, a single law or a single policy statement, often referred to as the investment code, summarizes the objectives, privileges, terms and conditions for the implementation of investment activities, particularly foreign direct investment. Investment codes are often intended to encourage the development of the private sector by granting incentives and assuaging the uncertainties of investors through various guarantees.

B. Privatization and private sector development

71. Private sector development has recently become a central concern for many developing countries and economies in transition. Increasingly, Governments recognize that a vital private sector can not only contribute to the overall national economic development, but might also be essential to augmented employment, revenue generation and general social well-being. Effective economic development is tied to both domestic economic reform and international flows of capital, technology and expertise. To enhance the national capacities in this area the Division will continue to assist Governments in developing a network of institutions, agencies and mechanisms that support the functioning of markets and encourage entrepreneurial activities. It will focus in particular on (a) formulation of a general

policy environment conducive to private sector development; (b) enhancement of entrepreneurship and business development; and (c) improvement of the access of enterprises to finance through financial sector development.

C. Economies in transition

72. The transformation processes in the transitional economies have become a major issue on the international agenda of the 1990s. The central challenge of the United Nations in this area is to ensure that the change is smooth and peaceful, particularly by providing support for building up the capabilities required to establish a market-oriented economy and for strengthening democratic institutions. In order to develop and implement activities aimed at supporting the process of bringing about economic reforms and restructuring, a special Section on Economies in Transition and Free Economic Zones was set up within the Legal, Research, Environmental and Transitional Economies Branch of the Transnational Corporations and Management Division. The Section supplements analytical and technical cooperation activities undertaken by other Branches of the Division. Technical cooperation projects will address both public administration and private sector needs of the countries in transition. They will focus in particular on the development of management training, accounting reform and accounting education projects for the Central Asian countries of the former Soviet Union, advisory activities on developing national institutional and legal frameworks for foreign direct investment and a series of seminars on economic and social aspects of the reforms.

D. Sustainable development

73. The work on environmental aspects of the activities of transnational corporations will continue to be implemented as a follow-up to the United Nations Conference on Environment and Development, in particular by providing support to the Commission on Sustainable Development in strengthening new business, industry and government links for sustainable development. Emphasis will primarily be placed on the following six areas: (a) integrating environment and development into corporate decision-making at the national level; (b) building the institutional capacity of developing countries and transitional economies to manage large-scale investment and transfer of technology projects in an environmentally sound manner; (c) examining linkages between trade, foreign investment and the environment; (d) evaluating market and regulatory instruments that seek to increase the use of environmentally sound products, processes and services; (e) supporting full internationalization of environmental costs and transparency in accounting and reporting; and (f) contributing to the further expansion of corporate international environmental laws, agreements and guidelines. The Commission may wish to consider setting up an advisory group of corporate executives and other business experts to advise the United Nations in the above areas, and to further encourage corporate participation in sustainable development.

E. Information management

74. The information service has a critical function to perform to support policy-oriented research and advisory work and to meet the information needs of Member States on investment and cognate areas. Currently, the information system is the basis for the provision of comprehensive, integrated information services, which include research and reference, training in the use of information technologies, database development and management, development of information resources at the national level, and publication of information manuals, repertories and bibliographies. The constant inflow of government and non-governmental organizations users and requests has permitted the service to keep account of and even anticipate emerging information needs and to respond dynamically. This has been possible because of the long-standing strategy of securing access to the most comprehensive electronic information resources - commercial as well as proprietary - and concurrently developing good information management skills (retrieval, evaluation and selection) that permit flexible and effective use of those resources.

75. In the area of market enhancement, the FIND project mentioned above is designed to provide business leads as well as access to a network of supporting services. The legal component of the system will be put to use to define and refine an enabling environment for investment and business development, as well as to strengthen national capacities for foreign direct investment. Work already done to identify research and analyses of privatization experiences and experiences of economic transition will permit further support research and advisory work. The resources of the information system can be tapped to backstop work on the broader issues of sustainable development.

Notes

1/ See Official Records of the Economic and Social Council, 1992, Supplement No. 6 (E/1992/26).

2/ United Nations publication, Sales No. 91.II.A.13.

3/ United Nations publication, Sales No. E.92.II.A.24.

4/ United Nations publication, Sales No. 91.II.A.20.

5/ United Nations publication, Sales No. 92.II.A.11.

6/ United Nations publication, Sales No. 93.II.A.1.

7/ United Nations publication, Sales No. 92.II.A.7.

8/ United Nations publication, Sales No. 91.II.A.18.

Annex I

MAJOR TRAINING WORKSHOPS, SEMINARS, SYMPOSIA AND ROUND TABLES RELATING TO FOREIGN DIRECT INVESTMENT IN 1992 a/

Title	Dates	Country
Development of International Financial Markets	17-21 February	Ghana
Entrepreneurship Development Workshop	17-28 February	Ghana
Seminar on Foreign Investment and Privatization	24-28 February	Mozambique
Round Table on BOT (build-operate-and-transfer) and the Private Sector	25-26 February	Philippines
Petrochemical Sector	16-20 March	China
Entrepreneurship Development Workshop	23 March-3 April	Argentina
Investment Planning and Appraisal in the Central Region	23-27 March	Ghana
Entrepreneurship Development Workshop	27 April-1 May	Nigeria
Round Table on Foreign Direct Investment	28-30 April	Pakistan
Negotiating Joint Ventures	11-15 May	Jamaica
Entrepreneurship Development Workshop	11-22 May	Ghana
Entrepreneurship Development Workshop	11-22 May	Uruguay
Screening and Monitoring Joint Venture Projects	12-16 May	Republic of Korea
International Arbitration	18-22 May	Ghana
Joint Ventures in the Fisheries Sector	1-4 June	Mozambique
Symposium on Taxation of Foreign Investment	10-11 June	United States of America
Entrepreneurship Development Workshop	23 June-3 July	Uruguay
China Management Training	1 July-31 August	China
Entrepreneurship Development Workshop	6-17 July	Zimbabwe
Workshop on Hydrocarbon Legislation	13-17 July	Vanuatu

Title	Dates	Country
Workshop on Negotiating Joint Ventures with Transnational Corporations	30 July-4 August	Mongolia
Investment Round Table	6-7 August	Mongolia
Fraud in International Banking and Financial Transactions	14-17 September	Nigeria
Privatization, Negotiations and Ethics	5-9 October	Sierra Leone
Entrepreneurship Development Workshop	12-23 October	Nigeria
High-level Symposium on the Contribution of Transnational Corporations to Growth and Development in Latin America and the Caribbean	19-21 October	Chile
Intellectual Property Protection	19-23 October	Cuba
Foreign Investment and Joint Ventures	26 October-5 November	Uganda
Workshops on Global Trends of Foreign Direct Investment and Strategies of Transnational Corporations in Brazil	3-6 November	Brazil
Foreign Investment and Joint Ventures with Transnational Corporations	9-10 November	United Republic of Tanzania
Negotiating Joint Ventures	9-10 November	Cambodia
Entrepreneurship Development Workshop	23 November-4 December	Zimbabwe
Entrepreneurship Development Workshop	24 November-5 December	Venezuela
Code Unique Round Table	2-8 December	Tunisia
Training of Trainers at Institutions of Higher Learning	7-18 December	Senegal
Development Strategies and Legal Framework in the Tourism Sector	16-18 December	Mozambique

Notes

a/ In addition, the Division provided resource persons to a number of training activities sponsored by other organizations.

Annex II

PUBLICATIONS ON TRANSNATIONAL CORPORATIONS AND FOREIGN DIRECT INVESTMENT ISSUED IN 1992

World Investment Directory: Central and Eastern Europe (United Nations publication, Sales No. E.93.II.A.1), 432 p.

World Investment Report 1992: Transnational Corporations as Engines of Growth: An Executive Summary (United Nations publication, Sales No. E.92.II.A.24), 26 p. (issued in English and Spanish).

World Investment Report 1992: Transnational Corporations as Engines of Growth (United Nations publication, Sales No. E.92.II.A.19), 356 p.

Environmental Accounting: Current Issues, Abstracts and Bibliography (UNCTC Current Studies, Series B, No. 9) (United Nations publication, Sales No. E.92.II.A.23), 86 p.

Formulation and Implementation of Foreign Investment Policies: Selected Key Issues (UNCTC Current Studies, Series B, No. 10 (United Nations publication, Sales No. E.92.II.A.21), 84 p.

The East-West Business Directory 1991/1992 (United Nations publication, Sales No. E.92.II.A.20), 567 p.

Bilateral Investment Treaties. A joint publication by the United Nations Centre on Transnational Corporations and the International Chamber of Commerce (United Nations publication, Sales No. E.92.II.A.16), 46 p.

Accounting for East-West Joint Ventures (United Nations publication, Sales No. E.92.II.A.13), 282 p.

World Investment Directory 1992: vol. 1, Asia and the Pacific (United Nations publication, Sales No. E.92.II.A.11), 356 p.

Transnational Banks and the External Indebtedness of Developing Countries: Impact of Regulatory Changes (UNCTC Current Studies, Series A, No. 22) (United Nations publication, Sales No. E.92.II.A.10), 48 p.

Foreign Direct Investment and Industrial Restructuring in Mexico (UNCTC Current Studies, Series A, No. 18) (United Nations publication, Sales No. E.92.II.A.9), 114 p.

International Accounting and Reporting Issues: 1991 Review (United Nations publication, Sales No. E.92.II.A.8), 243 p.

Climate Change and Transnational Corporations: Analysis and Trends (United Nations publication, Sales No. E.92.II.A.7), 108 p.

Foreign Direct Investment and Technology Transfer in India (United Nations publication, Sales No. E.92.II.A.3), 150 p.

The Determinants of Foreign Direct Investment: A Survey of the Evidence (United Nations publication, Sales No. E.92.II.A.2), 84 p.

Government Policies and Foreign Direct Investment (UNCTC Current Studies, Series A, No. 17) (United Nations publication, Sales No. E.91.II.A.20), 66 p.

The Impact of Trade-related Investment Measures on Trade and Development. A joint publication by the United Nations Centre on Transnational Corporations and the United Nations Conference on Trade and Development (United Nations publication, Sales No. E.91.II.A.19), 104 p.

Transnational Corporations and Industrial Hazards Disclosure (United Nations publication, Sales No. E.91.II.A.18), 86 p.

Transnational Corporations Library, The Theory of Transnational Corporations (London, Routledge, 1992), set A, vol. 1, 464 p.

Transnational Corporations Library, Transnational Corporations: A Historical Perspective (London, Routledge, 1992), set A, vol. 2, 464 p.

Transnational Corporations Library, Transnational Corporations and Economic Development (London, Routledge, 1992), set A, vol. 3, 448 p.

Transnational Corporations Library, Transnational Corporations and Business Strategy (London, Routledge, 1992), set A, vol. 4, 416 p.

Transnational Corporations, a journal published in English by the Trnasnational Corporations and Management Division of the Department of Economic and Social Development (New York, United Nations, 1992), vol. 1, Nos. 1-3.

Transnationals (newsletter) quarterly, current issue: vol. 4, No. 4 (December 1992).

Criteria for Sustainable Development Management (New York, United Nations, 1991), 11 p.

Benchmark Corporate Environment Survey (New York, United Nations, 1991): part I, 48 p., ST/CTC/SER.C/1; part II, 37 p., ST/CTC/SER.C/2; part III, 24 p., ST/CTC/SER.C/3; part IV, 57 p., ST/CTC/SER.C/4, part V, 16 p.; ST/CTC/SER.C/5.

Options to Facilitate Transfer of Environmentally Sound Technologies to Developing Countries on Favourable Terms, packets I and II (New York, United Nations, 1991).

Transnational Corporations: A Selective Bibliography/Les société transnationales: bibliographie sélective, Fall 1990-Fall 1991 (New York, United Nations, 1992), 265 p.

Inventory of Non-Petroleum Contracts held by UNCTC (New York, United Nations, 1992), 452 p.

Register of Consultants' Reports, 1976-1992 (New York, United Nations, 1992), 511 p.

Workshop Papers of UNCTC: Annotated Bibliography with Indexes, 1978-1991 (New York, United Nations, 1992), 153 p.

List of Documents of the Commission on Transnational Corporations, 1972-1992 (New York, United Nations, 1992), 60 p.

List of UNCTC Sales Publications, 1973-1991 (New York, United Nations, 1992), 35 p.

Documents of the Joint Units of UNCTC and the Regional Commissions, 1975-1991 (New York, United Nations, 1992), 33 p.

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ACTIVITIES OF THE TRANSNATIONAL CORPORATIONS AND MANAGEMENT DIVISION AND ITS JOINT UNITS

Experience gained in technical cooperation activities involving privatization and foreign investment

Report of the Secretary-General

SUMMARY

Privatization programmes are under way in at least 80 countries. Foreign participation can play an important role in these programmes. The report examines issues raised by privatization for the evolution of host country foreign investment policies. It discusses the economic and fiscal goals of privatization and the design of privatization and associated policies to enhance the contribution of foreign participation to those goals.

* E/C.10/1993/1.

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INTRODUCTION

1. At its eighteenth session, the Commission on Transnational Corporations requested the Secretary-General to report to the Commission at its nineteenth session on experience gained in technical cooperation. The Economic and Social Council, in its resolution 1992/36, recognized the growing importance of privatization and associated policy and administrative reforms and stressed the important role that foreign investment can play in the process of privatization. The present report was prepared by the Transnational Corporations and Management Division of the Department of Economic and Social Development in response to the above-mentioned request.

2. The report draws on the considerable experience the Division has acquired in technical assistance and advice on foreign investment projects and arrangements, with particular reference to privatization. The Division has conducted advisory and training activities on aspects of privatization and foreign investment in some 20 countries. The report also draws on other world-wide experiences from both country-based and international sources.

3. Privatization is the transfer to private ownership or operation of commercial interests of the State. While many objectives are put forward, the core belief is that goods and services will be more efficiently provided by the private sector under competitive conditions. Governments have also sought fiscal benefits from privatization either in the form of cash from asset sales, reduction of debt or relief from ongoing financial support to unprofitable State enterprises. Indeed, in many developing countries, fiscal requirements have been among the most compelling short-term motives for privatization.

4. Broadly conceived, privatization can take a number of forms, including (a) the full or partial divestment of equity in State enterprises or sale of State assets; (b) the formation of new joint ventures, in which the State contributes its existing assets; (c) management or leasing arrangements for State assets; (d) contracting out-of-State services; (e) private finance and operation of new public facilities under arrangements such as build-operate-transfer (BOT); and (f) commercialization of government facilities for research and training.

5. Privatization is a comparatively recent economic trend in the developing economies but it has already become a world-wide economic phenomenon. It has recently been taken up by the transitional economies as an integral part of their transformation to market economies.

6. At least 80 countries have active privatization programmes and some 8,500 State enterprises world wide have been privatized over the past 12 years. 1/ The pace of privatization appears to be accelerating as most countries' programmes are in their early stages. Completed privatization transactions have been concentrated by region - the former German Democratic Republic accounts for two thirds of completed privatizations, while a small number of countries in Latin America account for nearly 60 per cent of all the privatizations in the developing world. 2/

7. Privatization has opened up many new opportunities for transnational corporations, including the following:

(a) Access to lower-cost production sources;

(b) Access to important new national and regional markets;

(c) Access to highly prospective mineral deposits;

(d) Opportunity for new business alliances.

8. For those transnational corporations that operate in global industries, privatization provides new pieces for global production linkages and market networks. For example, a key strategy in the acquisition of interests in overseas airlines or telecommunications enterprises may be to increase opportunities for the transnational corporation to participate in the external traffic. This may also be an inducement to international hotel chains. Many of the major privatizations involving transnational corporations appear to have been selective and strategic in this way. 3/

9. As yet, there are no comprehensive statistics on the contribution of foreign direct investment to world-wide privatization. 4/ In those countries with well advanced privatization programmes, such as Chile and Jamaica, a minority of transactions involved foreign participation. However, foreign investors targeted the larger transactions so the foreign investor contribution to privatization by share of value of total investments is more significant. In certain prominent transactions, the value of foreign direct investment involved is the equivalent of several billions of United States dollars. 5/ It is also the case that privatization has accounted for a large share of overall foreign direct investment inflows to some countries with advanced privatization programmes. Thus, privatization may act as a catalyst to increasing foreign direct investment and broadening its sources.

10. Sectorally, foreign participation in privatization has concentrated in manufacturing and public utilities, which have substantial capital and technology requirements. Telecommunications has a specially high incidence of foreign participation in privatization world wide.

11. It is possible that in the future there will be increased foreign activity in mining and petroleum privatization through joint ventures with state mining and petroleum enterprises. Also, foreign participation in the management and leasing of major State utility and infrastructure assets could spread. Investment in the expansion of these facilities through BOT schemes is likely to increase in importance as foreign investors gain confidence in the long-term economic stability of host countries and their capacity to assure access to foreign exchange from local currency earnings.

12. Host countries have much to gain by incorporating foreign participation in their privatization programmes. To realize these benefits it is necessary for privatization to take place under open and competitive market conditions supplemented by public interest regulation and intervention as necessary.

13. In many developing economies, urgent fiscal needs are driving privatization programmes under agendas that are heavily shaped by external creditors. This should not obscure the potential to realize important economic benefits from privatization and the associated policy and regulatory reforms. Many of the transitional economies are progressing to the point of separating enterprise ownership and control from the ministries in the largest enterprises that comprise the bulk of productive activity. Enterprises are being restructured to operate as market-oriented businesses. Foreign participation in various forms can be enormously supportive of the profound changes required for these enterprises to prosper.

I. FOREIGN INVESTMENT POLICY ISSUES IN PRIVATIZATION

14. In recent years, host country policies towards new foreign investment have become substantially more welcoming, and many Governments have implemented significant improvements in the national climate for foreign investment. Privatization offers significant additional opportunities for foreign participation - both in those industries traditionally targeted by foreign investors and in a range of "newly open" industries.

15. Might the enlarged scope for foreign participation afforded by privatization cause Governments to revisit their foreign investment policies? Also, are new issues raised in respect of the enabling conditions or "investment climate" for foreign participation?

16. Foreign investment has already been instrumental in the privatization of a number of large State enterprises in both the developing and the transitional economies. These cases have received considerable attention. However, they are probably not representative of the current thrust of most privatization programmes. Most countries' programmes are at the early stages, where typically small to medium-sized enterprises are put forward for privatization in the expectation that they can be readily transferable to domestic private sector ownership.

17. Yet, as privatization proceeds, much larger enterprises will be candidates for divestment. Their present size, let alone the capital needs for new investment, may exceed the absorptive capacity of local capital markets. Local management, technical skills and marketing connections may be in short supply. The role of foreign participation will come into sharper focus.

18. Privatization is at a relatively early stage in most developing and transitional economies. Yet, in these countries (as in many developed countries) there is some evidence that Governments are already exercising caution in respect of the scope of foreign participation in privatization. A number of quantitative measures are being applied to directly affect the balance between local and foreign ownership in enterprises to be privatized. (It is also possible that some Governments have chosen not to privatize certain enterprises because, realistically, the only feasible private acquirers would be foreign investors.) These measures include:

(a) Limitation of foreign owners' share of equity capital. For example, Malaysia places a 25 per cent limit and further requires diffusion of foreign

ownership in strategic enterprises so that no one foreign investor is dominant. Brazil has restricted foreign ownership to 40 per cent;

(b) Retention of the State's interest through joint ventures for rehabilitation or expansion;

(c) Exclusion of foreign investment from highly sensitive sectors (e.g., television and defence industries);

(d) Reservation of significant State ownership - possibly for eventual sale to citizens when conditions are propitious. Hungary, for example, seeks to withhold in State ownership an average of 25 per cent of the share capital of larger enterprises. This measure appears to be directly aimed at forestalling high levels of foreign ownership.

19. Why would Governments wish to place limits on the share of foreign participation in privatized industries (or to avoid privatizing certain enterprises because it might lead to foreign participation)?

20. In the first place, there is an understandable natural caution. It is already clear that organizing a national privatization programme is a demanding political and technical exercise. In any substantial privatization programme, a significant percentage of economic activity will be shifted from State to private provision, often under new "rules of the game". Governments are acutely aware that in economic changes of such magnitude there will be for long periods "winners" and "losers" among different population groups. In this situation, foreign participation has to be introduced in a sensitive and careful manner because privatization will certainly mean, in the short term, that the aggregate stake in national economic activity owned by or on behalf of citizens will be reduced in favour of foreigners. 6/

21. More fundamentally, Governments may consider whether privatization presents new questions about the important issues of sovereignty, local participation and control which arise in setting foreign investment policy. These questions are addressed below.

A. Sovereignty, ownership and control

1. Scale of foreign involvement

22. Privatization in principle opens more sectors of economic activity to foreign participation. Privatization may therefore revive concerns that foreign participation may come to play a too pervasive and influential part in economic life.

23. Is it likely that privatization will open the floodgates to foreign investment on a scale that is not consistent with economic sovereignty in either the developing or the transitional economies?

24. It should be noted that, over the past two decades, in no developing region has foreign investment accounted for more than 5 per cent of gross domestic capital formation. In the second half of the 1980s, foreign

investment accelerated but it appears that it is only in a few individual countries (such as in countries rich in mineral resources and Asian newly industrialized countries) that foreign direct investment accounted for over 15 per cent of gross domestic capital formation. 7/

25. Since in the developing countries the public sector typically accounts for about 10 to 20 per cent of economic activity, these statistics suggest that it is most unlikely in the developing countries that even comprehensive privatization could result in statistically high shares of ownership by foreign investors.

26. In principle, privatization affords greater scope for significant foreign penetration in the transitional economies. This is so because the State can account for over 90 per cent of economic activity prior to privatization. Also, a shortage of business skills and institutions and underdeveloped financial intermediaries may handicap local participation in divestments.

27. Despite the very early stage of privatization in the transitional economies of Central and Eastern Europe, there is already some sensitivity to the issue of the scale of foreign ownership. Hungary has privatized one fifth of State property and 7 to 8 per cent of the economy is foreign-owned. 8/ If this statistical relationship were maintained for the remainder of the privatization programme, it could result in comparatively high levels of foreign ownership.

28. It seems probable that a relatively high share of foreign ownership is itself a transitional feature of the transitional economies. With the development of a local market-oriented business culture and supporting institutions there is some reason to suppose that the share of foreign ownership will decline over time.

29. It has to be questioned whether, in any case, the supply of foreign investment will be forthcoming in volumes that might be troublesome to host countries. One indicator may be found in the largest single privatization programme that has taken place - in the former German Democratic Republic. There are special features such as the role played by investors from western Germany. However, of the first 4,000 enterprises sold, only 176 were acquired by non-German buyers despite the instant access to economic stability and a substantial national market afforded by unification. 9/

30. The new opportunities for foreign participation offered by privatization may, however, lead to concentrations of foreign influence in certain industries.

31. First, privatization could be a catalyst for high levels of foreign participation in particular export-oriented sectors and industries where foreign direct investment is already concentrated, especially in the developing counties. Natural resources and manufacturing are the most likely cases.

32. Secondly, privatization could involve high shares of foreign direct investment in the "strategic" industries that hitherto were expressly closed to foreign investment in the developing as well as in the transitional economies. Governments may consider this too intrusive, especially when it occurs in the

strategic industries that were originally placed in the public sector because of their sensitive nature.

33. These strategic industries include public utilities such as telecommunications and electricity generation, key infrastructure such as roads, railways and ports and, sometimes, service industries such as banking and airlines.

34. There would appear to be considerable scope in selected and strategic industries for the foreign share to be quite high. This is especially likely to occur if the domestic capital market is undeveloped or weakened by inappropriate macroeconomic policies and where local business skills are in short supply. Many of the privatizations in the above-mentioned sectors in the developed countries and in Latin America and Asia incorporated substantial local participation. In these countries, the supportive framework was in place. This supportive local business framework is less developed in the transitional economies and elsewhere in the developing world.

2. Opportunity for local participation

35. In many cases, Governments recognize that well-structured foreign participation can contribute to better capitalized, more efficient and dynamic industry. But, at the same time, it is recognized that past pervasive State ownership may have stunted local entrepreneurship and private ownership.

36. It may therefore be an important objective of a privatization programme to ensure full opportunity for local involvement in divested State interests. Indeed, the development of a market-oriented business and property culture may be an integral objective of the privatization programme such as in the transitional economies. In these circumstances foreign participation is likely to be assigned a supporting rather than a central role.

37. Associated concerns may be that poor local business conditions and undeveloped local capital markets mean that locals will not have the opportunity to make a meaningful bid and may indeed lose an opportunity which it will be impossible to retrieve once a foreign investor becomes entrenched. (A variation of this concern is that privatization may afford too much opportunity for an affluent minority group among the local population to increase its economic dominance.)

38. Such perceptions may become quite intense if the privatization process is perceived to result in sales of State assets or interests at concessional prices to foreign participants because of their ability to pay in hard currency.

39. All these issues can be termed problems of perceived "crowding out" of local private involvement by foreign participation in privatization. Privatization will present crucially important policy challenges to Governments to develop modalities of privatization that are participatory and developmental for local business and investment and for the retention of highly skilled personnel.

40. One strategy may be to limit foreign investment in, or defer privatization of, key State interests until local business interests and investors are better equipped to participate. Some Governments may be attracted by this approach, although it might severely delay the effective privatization of large State enterprises. Another approach to sustaining local involvement is to retain significant State ownership in new joint ventures with foreign investors. This does not seem a promising way of promoting the goals of private domestic business development and investment. A more promising alternative strategy may be to seek foreign participation in forms and on terms that themselves foster the development of local institutions and skills.

41. Some positive methods are being applied to handle possible crowding out problems and to make foreign participation complementary rather than competitive with local business and investment goals.

42. One method, which has been used in both developing and transitional economies, is to arrange concessional acquisition schemes for citizens. These can take the form of discount share prices, credit for purchases, or deferred payment schemes. These are efficient schemes in that the public subsidy is targeted directly at the objective of promoting citizen ownership. Typically, these schemes do not necessarily account for a majority of the share capital in an enterprise to be privatized - even where additional concessional schemes are available for workers and retired workers. Thus, they do not preclude foreign investors from acquiring a major initial stake or the enterprises from subsequently raising capital internationally to finance new investment.

43. A second method to ameliorate problems of crowding out is to spin off business activities from the main enterprise in a format that makes them accessible and attractive to local business. This can be a useful method with large utilities which, as a whole, may well exceed the absorptive capacity of the local capital market. In preliminary advice on the privatization of a telecommunications State enterprise, the Division identified repair and installation functions and other support services as suitable for divestment to local business. On the basis of long-term contracts with the telecommunications entity, these could be established as bankable business projects. Part of the performance requirements of the foreign investors in these cases will be to give training and support to these businesses to keep up with the introduction of new technology.

44. Further innovation will be needed to devise methods of foreign participation that are complementary to the development of local business development and private ownership.

3. Issues of national control

45. In the preceding subsections, it has been argued that privatization is unlikely to contribute to levels of foreign participation that threaten national economic sovereignty, although there may be a high concentration in particular industries. Does privatization lead to special issues of enterprise regulation and control that would justify limiting the access of foreign investors to certain kinds of enterprises to be privatized?

46. Developing countries have developed a maturity in dealing with the policy issues involved in obtaining mutually beneficial foreign investment sectors where they are traditionally concentrated, such as in manufacturing and natural resources. It is not readily apparent why the degree of foreign ownership in a sector would affect Government's ability to regulate and negotiate to advantage. Experience in these sectors suggests that significant local or State ownership is not necessary, or even sufficient, to achieve regulatory control. Further, the transitional economies can obtain, through technical cooperation and other means, access to extensive international experience in introducing substantial foreign involvement to such sectors.

47. For both sets of countries, the main issue is likely to be foreign participation in privatizing the strategic "newly open" industries. In these industries, foreign direct investment is comparatively new and untried world wide and there is less predictability about its consequences. At the same time, foreign participation in industries may bring the greatest economic benefits through the supply of capital, technology and markets that cannot be fully accessed through continued domestic ownership.

48. In summary, foreign investment policy is likely to be challenged but not threatened by the additional foreign participation arising from privatization. The overall scale of foreign involvement is likely to be within international precedents, although in the transitional economies, in particular, it will reach unfamiliar levels. Foreign involvement may be concentrated in certain industries. Some of these will be "newly open" strategic industries that present regulatory issues. However, it still seems to be the case that limiting foreign participation is unnecessary to achieve public interest controls. More important, privatization will take place in many countries with a rudimentary or stunted domestic private sector. A challenge for foreign participation is for it to be complementary and supportive of the development of local business and ownership.

B. Enabling conditions

49. Privatization does not on the whole present special issues in attracting foreign investment compared with greenfields investment or any other foreign direct investment activity. Foreign investors will in any event have a number of concerns that may sometimes go beyond those of local private investors, for example:

(a) A legal framework that is conducive to businesslike decisions and outcomes, including respect for the rule of law;

(b) Ability to take effective control and exercise management autonomy;

(c) Stability or at least predictability of the rules and policies;

(d) Non-discriminatory treatment;

(e) Impartial dispute resolution;

(f) Non-prohibitive fiscal treatment;

(g) Reliable access to foreign currency.

50. During the 1980s, there has been increased recognition by developing countries of these and other important "investment climate" issues. Economies in transition have only recently had to grapple with them outside the somewhat artificial environment of the State/foreign enterprise joint venture laws and free economic zones. Thus, the challenge to provide minimum enabling conditions is especially acute in the transitional economies. This applies in particular to the development of foundation business laws, appropriate sectoral laws and supporting business and financial institutions.

51. Governments of the transitional economies are fully aware of the importance of developing these foundation laws, policies and institutions. Unfortunately, it is quite common to see rushed attempts to produce documents such as business laws. Often, these are unsatisfactory and have to be revised repeatedly, which causes confusion to investors. In one transitional economy in which the Division has advised, there have been three versions of the foreign investment law in the past three years. Meanwhile, there have been uncoordinated and thus confusing attempts by multilateral and bilateral agencies to assist the Government in drafting a company law.

52. These problems often stem from a lack of technical knowledge in the host country combined with pressures to meet unrealistic timetables. In other cases, the changeability of government positions on key investment issues reflects either intense policy debate or unresolved constitutional issues concerning the jurisdiction of regional and local authorities.

53. While there is uncertainty about the durability of laws and policy, privatization transactions involving foreign investment may be unduly confined to those that can be the subject of virtually self-contained contracts (such as in the mineral resources area). Alternatively, foreign participants may minimize their risks in an uncertain environment by seeking management or leasing arrangements rather than capital participation. This will not always suit Governments seeking new capital formation and improved technology as a key benefit of privatization.

54. An important aspect of the investment climate is reorganization of the operations of State enterprises and supporting business practices and institutions so as to make them more suitable vehicles for foreign participation, where that is desired.

55. The transitional economies (in particular those of Central and Eastern Europe) are now at a critical stage of enterprise reorganization - the legal incorporation of State enterprises, separation of their ownership and control from the ministries and their preparation to perform as businesses in a market economy. Essential steps include the following:

(a) Organization of the enterprises - installing capable boards, competent management and sound business practices, including new accounting standards;

(b) Development of business plans which may include links with foreign investors for capital, markets and technology;

(c) Continued development of appropriate sectoral policies, capital markets and financial institutions and capacity of the ancillary business professions.

56. In the market economies, the existence of much of this capacity is taken for granted. In the transitional economies, especially in Central and Eastern Europe, there are major gaps in the above-mentioned areas and the need for programmes of unparalleled scope and speed to fill them.

57. Technical cooperation programmes have much to offer in training and advisory activities at the level of enterprise reorganization, formation of new business relationships (including those with foreign investors) and the required legal, institutional and professional environment for business. The Division, for example, conducts training programmes in financial and management accounting in the newly independent States of the former Soviet Union. These train board directors and company managers in reformulating accounting information to acceptable international standards. This provides a foundation for preparing valuations for new investment and financing proposals, especially where foreign investment and financing is being sought.

58. In summary, privatization does not necessarily raise new issues with regard to the general enabling conditions for foreign investment. But Governments seeking a broad-based increase in capital formation through privatization will need to intensify their efforts to improve the enabling conditions for foreign investment.

II. ORGANIZING PRIVATIZATION AND THE ROLE OF FOREIGN PARTICIPATION

59. Privatization is taking place in a world economy that has changed since enterprises were first taken into public ownership. Inward-looking development strategies in which the outside world was walled off to permit domestic business capacity to grow are no longer seen as optimal. The fastest growing economies are those that seek ways to participate openly in the global economy through investment and trade. Foreign participation can have an important role to play in outward-looking growth strategies by bringing capital, technology and markets to developing countries.

60. Most privatization programmes contemplate some role for foreign participation. The precise role that it plays depends in part on the goals of the overall privatization programme. For example, if privatization is seen by a Government as largely an exercise in unburdening itself of financial and management responsibilities, foreign investment is likely to be seen primarily as a fiscal revenue source. If the goals of privatization are more widely defined to include lifting the rate of economic growth, foreign investment may be seen as a more dynamic, economic force, especially if privatization is part of an economic liberalization strategy.

61. What are the important issues in designing and implementing privatization programmes so as to incorporate and optimize foreign participation? Four interrelated issues stand out: how foreign participation might improve economic gains of privatization; how it might contribute to economic loss; the

special issue of the entry price for foreign investment; and, finally, the role of incentives to encourage foreign participation. These issues are considered below and in section V dealing with modalities in privatization transactions. The overriding conclusion is unsurprising - foreign participation can make a distinct contribution to privatization but will only be beneficial in so far as privatization is accompanied by appropriate general policy and regulatory reforms and improved government capacity to implement them.

A. Sources of potential economic gains

62. Foreign participation can contribute to economic gains from privatization in a number of ways:

(a) Improved technical efficiency of the enterprise;

(b) Access to larger markets, including foreign markets;

(c) New capital formation;

(d) Supply of improved technology.

63. In principle, government or domestic private owners could acquire or organize these for themselves, without inviting foreign participation. However, transnational corporations often have a comparative advantage in one or more of these aspects. Also transnational corporations may be superior providers because they are better able to bundle together all these related inputs and deliver them to enterprises of large size and complexity. In these cases, foreign participation will potentially improve the economic impact of privatization.

64. There is currently some indication of these impacts in completed privatizations. Two caveats should be borne in mind in considering some cases. First, completed privatizations are so recent that experience to date deals only with the short-term impact. Secondly, change in ownership or management is usually one aspect of a number of matters that change upon privatization and affect future performance. For example, it was often difficult for State-owned enterprises to function efficiently in a climate of numerous and conflicting policy objectives.

65. The Division recently reviewed the impact of partial privatization on the technical efficiency of port services in an African country. Several competing port services companies were formed to take over port services from the Government. Some of the new entrants were fully foreign-owned and some were joint ventures with local interests. Each had foreign management. After four years of private operations, significant technical performance improvements were evident. Average cargo throughput per hour doubled during the period and, partly as a result, new business was attracted to the port, which recorded a 300 per cent increase in cargo volumes.

66. Recent reviews of port and utilities privatizations elsewhere also report gains in technical efficiency following privatization with foreign participation.

67. Access to larger markets, especially foreign markets, is likely to be a key comparative advantage gained from foreign participation. This is especially the case where the transnational corporation itself controls an international network of suppliers. For example, in a case in which the Division advised on the partial privatization of a State manufacturing enterprise in Africa, the successful bidder proposed to increase investment and production substantially so as to export feedstock to its operations in other regional countries.

68. Access to capital and associated improved technology was of central importance to the privatization of Skoda, the Czech and Slovak State-owned auto company in 1991. Volkswagen, the German auto company, acquired 100 per cent of Skoda and committed additional investment totalling $6.4 billion over the following 10 years. 10/

69. The Division recently advised the Government of a small country on options for privatization of the State telecommunications enterprise. The present system was lagging both in services and in application of modern technology and was an impediment to economic growth. Only two persons per hundred had a telephone; many thousands of applicants were awaiting telephones despite an installation fee many times the regional norm. On average, only one half of the international calls were completed. It was estimated that the investment required to install digital services and achieve service coverage on a par with the competing regional countries was over US$ 1 billion. This investment was beyond the resources of either the public or the local private sectors and their capacity to access international capital sources. Clearly, well-structured foreign participation could make a significant economy-wide contribution in these circumstances.

70. As these examples illustrate, there may be significant benefits available from foreign participation in privatization. However, Governments will also need to consider the environment in which privatization may be associated with net economic costs, as considered below.

B. Sources of potential economic loss

71. Foreign participation in privatization can, in general, be associated with the imposition of net economic costs from three sources:

(a) Inappropriate economic policies;

(b) Inadequate regulation when public and private interests diverge (e.g., in the monopoly-prone industries);

(c) Fiscal loss through underpricing the divestment.

72. It is important to note that, in respect of the first two matters (policy and regulation), economic costs can arise from privatization transactions irrespective of the form or level of foreign participation, if any. Further, they are avoidable by careful policy and regulatory development prior to deciding on the form of disposal of State interests. Experience shows that this is not always the case, especially when privatization is undertaken in a

piecemeal fashion or is motivated primarily by government fiscal aims. An example of the problems that can arise is given below. It is only with respect to fiscal loss through underpricing that foreign participation may uniquely lead to economic loss. This probably accounts for the widespread attention that has been given to valuation and competitive bidding arrangements in privatization.

73. Inappropriate economic policies distort market prices and lead to investment and production decisions that may be commercially attractive but are not in accordance with a country's economic interests.

74. Consider, for example, the potential economic cost of privatizing a State enterprise in an industry that is not internationally efficient and depends on import protection for its financial survival. Suppose that no amount of increased investment, improved technology and greater management efficiency brought by a foreign investor will enable the enterprise to be profitable without that protection. If the Government rules out liquidation of the enterprise (perhaps because of its sunk investment or its employment contribution), foreign participation will contribute to net economic loss for the community. Further, foreign investors are likely to seek contractual assurances of continued long-term import protection that will entrench the problem.

75. Truly awkward issues arise in these circumstances as the Division has found in advising Governments in such cases. One case involved privatization of a State agriculture enterprise that partly supplied the local market, assisted by an import quota. A policy dilemma arose between imposing new investment obligations on the buyer and not wishing to expose the economy to further welfare loss by boosting production of the high-priced local product. A second dilemma arose between imposing high economic cost through substantial continued import protection (to boost profitability) and obtaining a high divestiture price.

76. It is likely that a great many cases of economically inefficient enterprises are yet to be addressed in privatization programmes throughout both the developing countries and the economies in transition. As the example illustrates, it is important that an overall industrial and trade policy be developed to govern the privatization programme.

77. The second source of welfare loss can arise where public and private interests diverge and are not controlled by adequate regulatory systems. Possible instances include environmental and public health and safety matters and consumer protection in the case of monopoly-prone industries. Frequently, these matters were dealt with by the internal regulatory mechanisms of the State enterprises themselves. With privatization this is less appropriate. Governments will need to establish separate and perhaps independent regulatory bodies for public interest regulation.

78. A trend in the programming of privatization in both the developing and the transitional economies, which the Division has encouraged in its advisory and training work, is to commence privatization with small to medium-sized enterprises. These fit more easily into market-oriented competitive industries and present fewer specific regulatory issues. More time can then be taken to

develop industry-specific regulation to govern the operations of the larger and strategic enterprises. This will give an opportunity for Governments to devise frameworks that make sense for the national economic interest and also make business sense for investors.

79. Nevertheless, the sequencing of privatization should contain a window that enables selected major enterprises to be privatized on a one-off basis with a carefully defined role for foreign investment. Telecommunications is a good example in which regulatory reform, full or partial divestiture, large-scale new investment commitments, and substantial fiscal inflows can be bundled together in a separate privatization package.

C. Entry price

80. In the public perception, the most obvious potential for economic loss from foreign participation arises from underpricing the disposal of the State's interests - whether this takes the form of acquisition of an asset or interest, the participating interest gained from contributing State assets to a joint venture or the value of lease payments. When a non-resident investor pays below maximum financial price for an interest this is a transfer across borders and an economic loss for the host country. An underpriced sale to a domestic investor is a transfer within borders and does not result in economic loss, though it may raise questions of fairness (especially if the sale is to an affluent minority group).

81. It is therefore in the public interest that (a) privatization transactions be accompanied by sound financial valuation of the interest prior to disposal, and (b) the process is conducted in a competitive manner likely to maximize the State's financial return given the parameters of the tender.

82. Financial valuation of State enterprises and assets is often not a straightforward task (for either Governments or potential foreign investors). Performance projections are complicated in many countries by pronounced uncertainties about the future commercial climate. There may also be problems with the availability and quality of historical financial information. For example, in the transitional economies, there is often a lack of historical information prepared in accordance with internationally accepted accounting standards. Technical valuation problems were described in a report submitted to the Commission's Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting at its tenth session (E/C.10/AC.3/1992/5).

83. A number of misgivings underlie the concern of underpricing. Governments sometimes have unrealistic goals in pricing asset sales or deciding on minimum acceptable returns from joint venture arrangements - for example, that the sale of a business must at least return the accumulated value of Government's capital expenditure as owner, or at least pay off the enterprise's debts, or at least enable all severance and pension obligations to be met. However, commercial value depends on future not past performance. Proper valuation procedures will demonstrate fair value. This may be much lower than purported asset value or enterprise net worth. Given the sensitivity of the issue, it

may help to have independent valuations, especially where foreign investors are likely to participate.

84. However, there is a further concern that assets will be underpriced because current economic dislocations produce such a "buyers market" for foreign investors with hard currency that there is an intrinsic bias that is not readily overcome by available valuation methods. A key privatization official of a major transitional economy has commented that a Western student working during summer vacation could earn enough to buy an entire plant in his country. This comment exemplifies a concern that the Division has noticed in training workshops.

85. Asset values are based on expected future commercial performance. Governments that believe that assets are currently "too cheap" take a more optimistic view than foreign investors of future economic conditions. Governments with this view may delay or limit privatization until expectations improve. This ignores the catalytic effect that completed privatizations themselves have in improving the perceived economic climate. Moreover, if privatization's essential goal is to put State assets to more effective economic use, delays will not be in a host country's wider economic interests.

86. Some case-study evidence is now emerging that shows how the economic importance of the cross-border distribution of the gains of privatization, while significant, can be outweighed by direct economic effects. Foreign acquirers of interests in Telmex, the Mexican telephone company, certainly profited from its privatization. But a recent study calculates that privatization produced substantial economic benefits and provided a net gain for Mexico. 11/

87. Overall, it can be argued that the strongest source of benefits to be gained from privatization are not likely to be fiscal. The benefits are to be found in improved enterprise management and better allocation of resources, including the introduction of new investment, technology and markets and provision of lower-cost goods and services in the economy.

D. The role of incentives and performance requirements

88. It is rare for a privatization programme to mandate special incentives for foreign investors. Foreign investors can avail themselves of any relevant incentives at their disposal in the foreign investment law or those available in the country generally for qualifying investment from any source. These general incentives typically apply only to activities in which there is new capital formation. Thus, it is unlikely that foreign participants in privatization could, as a general rule, obtain incentives merely for carrying on business as usual.

89. Non-privatization specific incentives may apply to any new capital formation arising. This is the course taken by the Division in advising on an agro-industrial privatization in Africa. It was suggested that the Government offer the accelerated depreciation allowances available in the investment promotion legislation but only on assets acquired subsequent to the privatization.

90. The role of debt/equity swaps as an incentive device has attracted some attention in the context of privatization. A debt/equity swap enables an investor to obtain local currency for an equity purchase in exchange for releasing the country from a foreign debt obligation. An incentive for the investor can arise from a combination of a discounted secondary market value of the debt, the amount of this discount to face value retained by the Government on conversion, and the exchange rate applied to the transaction. The benefit is a lower start-up capital cost or lower acquisition price. Swaps can be applied to either new private investment or state divestment and in principle can be available to both domestic investors with access to foreign exchange and to foreign investors.

91. Quite extensive use of debt/equity swaps has been made in several Latin American countries and in the Philippines, although relatively few of these have involved foreign participation in privatization. They were chiefly used to finance new enterprise or the expansion of existing private business. A number of questions have been raised about the merits of debt/equity swaps, including their impact on monetary growth and inflation and whether they have induced new investment or simply benefited investment that would have taken place in any event.

92. There is no doubt that Governments could make debt/equity swaps a powerful tool in promoting privatization if discounted debt to commercial banks is available. By choosing to retain little of the debt discount and offering an attractive exchange rate on debt/equity swaps a Government could offer large effective reductions in the divestment price of State interests. But it could do so just as easily by offering a discount directly and using the divestment proceeds to purchase its external debt paper. Debt/equity swaps are therefore a means of maintaining a high apparent divestiture price while indirectly offering an attractive price to the incoming investor. This procedure may be a more publicly acceptable way of offering an attractive deal.

93. On the whole, the prevailing practice is not to mandate special incentives for foreign participation in privatization. This is consistent with current trends in foreign investment policy which include equal treatment of national and foreign investors undertaking similar investments.

94. Nevertheless, any privatization transaction offers considerable scope for providing project-specific incentives. These can take the form of cost reductions (such as direct and indirect measures to lower the acquisition cost), in which the subsidy is from the Government. Or incentives can take the form of revenue enhancements (such as measures to control competition or regulate sale prices), in which any subsidy is likely to be from consumers. By targeting incentives on a case-by-case basis, Governments are able to link incentives to performance requirements such as investment and output targets. Indeed, it is quite common for Governments to set key performance requirements as conditions of the privatization - so that the entry price becomes a residual matter, albeit subject to competitive bid.

95. The Division was asked to review the quasi-privatization of the electricity, water and sewerage utilities in a country in Africa. Private companies were invited to tender for the leasing, operation and maintenance of the state facilities. Detailed performance requirements were set out in

contractual form in the tender documents, including the rate adjustment formulas for the 10-year lease period. The sole bid variable was the private operator's share of the consumer charges. The case of Telmex, the Mexican telephone company that was privatized in 1990, is a further example. The privatized entity was offered a monopoly on local services until 1996 and on long-distance services until 2006. Service rates were raised prior to the privatization and a long-term rate adjustment formula established. Detailed performance requirements were established, including expansion of the number of lines in service and the number of public telephones; maximum waiting times for installation were set and it was stipulated that all towns with over 500 inhabitants should have a telephone service by 1994. 12/ Arguably, the incentives provided in this case were the rate hike and protection from competition not in the form of fiscal incentives or an entry price discount (i.e., any subsidy came from consumers not from Government).

96. In monopoly-prone industries such as the public utilities cases cited above it is perhaps inevitable that wide-ranging performance requirements will be imposed on regulatory grounds. This is also occurring in respect of commercial outcomes. In a recent mining privatization case in Latin America, minimum throughput and processing requirements were set as conditions of the invitation to form a joint venture with the State. The tenders were to be judged on the per cent participation offered to the State by qualified bidders. In this case, the "price" (i.e., per cent of the joint venture offered to the State) was the variable that offered the required incentive to the investor.

97. The key benefits of privatization are likely to be found in economic gains through increased investment and output, new markets and improved technology. But this does not necessarily mean that Government should stipulate such commercial outcomes as entry conditions. Within the appropriate policy framework, scope should be left for potential investors to propose business plans that they believe make the best commercial use of the assets. At times, it may be appropriate to give contractual form to these proposals, especially where some form of incentive is involved.

98. In principle, however, it would seem contrary to the philosophy of privatization for Government to attempt to predetermine commercial outcomes over and above those that are required to meet regulatory standards.

III. REGULATION AND PRIVATIZATION

99. Privatization is sometimes seen as being the same thing as a reduced role for Government. This is only true in terms of the business investment and management activities of Government. Otherwise, privatization in fact requires a strengthening of Government - in its role and ability to be a regulator.

100. Where privatization occurs in industries that already contain private commercial activity there may be only a limited range of new public policy matters to attend to. For example, if the State enterprise was originally mandated to provide more competition, privatization should not present new regulatory issues. The focus will be more on the modalities of the transfer to ensure that the transfer to private hands does lead to a thriving firm. This may be difficult to achieve if the potential buyers are likely to be one of the

existing firms. A new foreign entrant can be helpful here even if the other firms are already foreign-owned.

101. More delicate matters arise if the privatization candidate was originally established to provide one firm in an industry that would be "sensitive" to local needs. Such a need was felt, for example, in banking in the newly independent countries. Colonial-era banks were thought to focus largely on financing the expatriate business community and not to service the local community effectively. But irrespective of privatization it will be important for the Government to develop policies that address the performance of all firms; thus, privatization itself does not present new regulatory issues. However, the opportunity can be taken in the privatization process to assess the likelihood that candidates will serve policy objectives.

102. However, where privatization is to take place in an industry previously served by a public monopoly, much regulatory strengthening and specific government intervention will be needed. The privatization of monopoly-prone industries, such as public utilities and infrastructure, for example, will require both consumer protection regulation and specific measures to address the needs of poor or remote communities.

103. In the economies in transition, it will require considerable effort to disengage ministries from their business functions and to accept a less embracing but none the less important role of regulator. In advising one transitional economy on new regulation for an important sector, the Division found the responsible ministry to be functioning as little more than the corporate headquarters of the State sectoral enterprises. The ministry's views on sectoral policy reform were strongly influenced by the State enterprises' desire that the reforms provide, by statute, for their free equity participation in all new ventures with private investors. This was to be balanced by fiscal concessions so as not to create a disincentive for private investment. The recently adopted foreign investment law of that country mandated substantial tax concessions to foreign investors. Such tax treatment may have been designed to enable State enterprises to negotiate benefits from joint venture deals over and above their capital contributions.

104. In principle, the greater the competition that Government can stimulate in an industry the less its regulatory burden. Foreign investment can help by increasing the competitive alternatives. It is important to note that foreign investment does not present new regulatory issues for Government over and above those that occur with foreign investment outside the privatization context. These issues are primarily fiscal (ensuring that the foreign-owned enterprise is a genuine profit centre and tax contributor within the host country) and technological (ensuring transfer of technology and training).

105. There is a need, however, for technical cooperation programmes to transfer experience in these matters to those countries that are only now beginning to encounter foreign investment on a significant scale.

IV. MODALITIES IN PRIVATIZATION TRANSACTIONS: SOME ISSUES

106. Whether in the transitional or the developing economies, the bulk of foreign investment is likely to be in larger transactions, those with special sectoral issues (such as natural resources) and in the monopoly-prone industries. Such transactions will be sizeable enough to justify a case-by-case approach to privatization.

A. Where to decide policy issues

107. Privatization can be seen as a catalyst for useful changes in economic policy and other factors that improve the investment climate. However, it is sometimes the case that Governments expect the chemistry to work at the bidding and negotiation stage. No matter how skilled negotiations may be, they are not the place to set national policy. They can at best only provide greater clarity and certainty as to policy. Policy decisions should be made prior to inviting proposals and should form part of the bidding environment. Otherwise, it proves extremely difficult to get comparable proposals and the perceived fairness and transparency of the process will suffer.

108. For example, the Division advised on bids received for the sale of 49 per cent of an industrial enterprise in Africa. The enterprise was a monopoly enjoying import protection. It sold virtually all output on the local market under rigid price controls and with considerable uncertainty about access to foreign currency at a highly overvalued exchange rate. The two leading bids varied in price by a huge margin. One bidder assumed that current policy would continue and sought to negotiate contractual assurances about its continuity. The other bidder assumed that current arrangements were unsustainable and based its price on estimated profit to be made by requiring that a small proportion of the product could be exported for hard currency. A more credible process would have fixed policy with respect to import protection, price control/competition policy, freedom to export and other policy matters prior to the invitations to bid.

B. Tender process

109. It is important that privatization is conducted through a transparent and competitive process to lead to a fair value transaction. Unfortunately, there are cases in which modalities of privatization are overly governed by the rules of public procurement, such as those that pertain to public works contracts. In this approach, the Government seeks to closely define performance requirements and reduce the tender process to little more than a comparison of offer prices for the State's interest. Recently, the Division was asked to advise on the form of tender documents in which the text of a proposed contract was annexed to the tender invitation. All tenderers were asked to post a bond that bound the winner to sign the contract substantially in the form proposed.

110. This kind of procedure overemphasizes transparency at the expense of encouraging innovative business proposals, including new investment, which potentially are the key benefit from the transaction. Governments may not be wise to assume that they know best the future directions of the enterprise,

especially where the enterprise has not been exposed to export opportunities or state-of-the-art technology. In most cases, bidders should be invited to propose business plans under general guidelines that should include such matters as:

(a) Ability to access new markets, including export markets;

(b) Willingness to undertake new investment to increase efficiency, alter the product mix and expand output or services;

(c) Proposals for the introduction of superior technology, for training, for related local business opportunities and for employment.

111. Two important consequences of this approach are that (a) the bids need to be compared under a number of criteria and with a certain amount of flexibility, and (b) the tender process will not end with a "winner" but will produce a preferred bidder who will be invited for exclusive negotiation of a comprehensive contract. Under these conditions, advisory assistance from international agencies can be useful in enhancing the credibility of the choice made of the preferred bidder and in assisting the negotiation of the agreement. A case in point concerns an industrial privatization in Latin America, in which the Division assisted the Government to develop an evaluation framework that would enable the State enterprise to consistently compare proposals encompassing both business plans and financial terms for joint venturing a State asset.

112. For the same reasons, Governments should not necessarily predetermine the corporate structure in advance, for example by insisting on retaining a fixed level of state ownership. Similarly, the manner and timing of remuneration can be left flexible. However, any deferred payment arrangement should be entered into prudently, as the lessons of Chile's first and failed privatization show. Governments should try to define their interests in ways that invite private parties to propose corporate structures and financial arrangements that are attractive to interested investors.

113. One issue in determining corporate structure is an apprehension that loss of ownership may also mean loss of control. In principle, this apprehension is not a foreign investment issue per se because the issue arises regardless of whether ownership is foreign or local. It is seen, though, as more acute with foreign investors because of the resources and expertise they command.

114. This issue is focused most clearly on foreign involvement in "strategic" industries and in terms of sovereignty over natural resources.

115. The Division's long experience with foreign investment issues in both established and new business is that government ownership is rarely necessary to achieve regulatory control. Controls to achieve public objectives can be exercised through a combination of the regulatory framework applied to the industry, supported, if necessary, by contractual arrangements applied to individual enterprises.

116. This issue was discussed in the previous report on experiences gained in technical cooperation activities involving assistance in formulating negotiation strategies (E/C.10/1992/10).

C. Enterprise restructuring

117. Some of the best known cases of privatization have involved extensive operational and financial restructuring prior to divestiture. Clearly, a certain amount of legal restructuring needs to be done in converting statutory corporations to limited liability companies. It is not, however, so obvious that extensive business or financial restructuring, including new investment, must be performed before divestiture. Governments are not necessarily better able to undertake business restructuring than new private owners.

118. It can, however, be useful for a Government to obtain specialist assistance to indicate the expected value of an enterprise if it carries out certain business plans. The Division recently assisted in the initial stages of a hotel privatization by commissioning a prospectus that indicated the value to be expected from a fully renovated and market-repositioned property.

119. The principal effect of financial restructuring (for example, Government writing off its loans to State enterprises or assuming their debt or severance payment obligations) is to boost the ostensible price received in the divestiture. Apart from any contingent liabilities that Government can absorb at lower financial cost than private investors, restructuring does not effect the ultimate fiscal impact of the transaction. Liabilities will be accounted for in the offer price. However, Governments may judge that a substantial apparent sale price helps the public credibility of the privatization programme.

V. SUMMARY AND CONCLUSIONS

120. Many countries now have active privatization programmes. While a great many State-owned enterprises have been privatized in one form or another, especially in Latin America, the process is still at an early stage in most countries. Foreign investor participation has typically played a significant though not dominant part in privatization so far. Major transactions have reflected the strategic interests of foreign participants.

121. Privatization may deepen and widen foreign participation in the host country and thus raise some long-standing issues in foreign investment policy. The evidence suggests that privatization will not induce foreign participation on an economy-wide scale that is problematical. But it could lead to substantial foreign involvement in selected industries, including newly opened strategic industries. Some measures to limit the extent of foreign involvement in privatizations are evident. These may be partly to prevent crowding out of local private participation and partly a lack of confidence in exercising regulatory control without ownership. Attention should be given to foreign participation modes that are complementary to the development of domestic business capacity and local ownership.

122. Foreign participation can contribute to the goals of privatization by bringing skills, capital, markets and technology that are not available domestically. These resources will bring economic gains so long as they are deployed in market-oriented conditions supplemented by public interest regulation, where appropriate. In the latter sense, privatization needs to be accompanied by a strengthened, not reduced, role of Government.

123. Privatization programmes rarely target specific incentives to foreign participants over and above guarantees and protections generally available to the foreign investor. However, individual transactions offer considerable scope for non-discriminatory incentives that might be linked to performance requirements.

124. Much attention is paid to the pricing issues in the divestment of State interests. Economic loss can occur if State interests are divested below best available price. Prior valuation and competitive offers are necessary safeguards. Despite these safeguards, Governments may perceive that difficult economic conditions produce a climate in which State interests will be divested too cheaply to foreign investors. Any tendency to delay or limit privatization as a result would conflict with the important goal of rapidly putting State assets to more effective economic use.

125. Privatization programmes are highly demanding technical exercises. There is considerable need and scope for training and advisory support to the developing and transitional economies covering policy and regulatory review and subsequent implementation, enterprise reform, and development of supporting business disciplines and institutions, as well as in the design and negotiation of divestments involving foreign investors.

Notes

1/ See World Bank, Policy Research Bulletin, vol. 3, No. 4 (Aug.-Nov. 1992).

2/ As reported in Privatization: The Lessons of Experience (Washington, D.C.) World Bank, 1992.

3/ These issues are further discussed in M. Odle, "Foreign investment and privatization", Transnational Corporations, vol. 2 (forthcoming).

4/ There are no comprehensive statistics on the share of divestment receipts that are accounted for by foreign investors or their contribution to new capital formation. Similarly, there is no comprehensive statistical information on how important privatization-related foreign direct investment flows are in relation to total foreign direct investment, or detailed research on the extent to which privatization-related flows are additional to or partly offset by foreign direct investment in its traditional forms.

5/ A listing of recent privatizations involving transnational corporations is contained in World Investment Report 1992: Transnational Corporations as Engines of Growth (United Nations publication, Sales No. E.92.II.A.19), p. 87.

Notes (continued)

6/ The Division's privatization training workshops in developing countries involve government officials, managers of State enterprises and private sector participants. The workshops can provide simulation models so that participants can become sensitized to the diversity of issues involved in devising workable and publicly acceptable programmes.

7/ Estimates of the Transnational Corporations and Management Division; see World Investment Report 1992 ...

8/ "Hungary looks homeward for investors to partake the fruits of privatization", The Wall Street Journal, 11 December 1992.

9/ Far Eastern Economic Review (12 December 1991).

10/ World Investment Report 1992 ..., p. 87.

11/ World Bank, "Welfare consequences of selling public enterprises" (Washington, D.C., 1992).

12/ Ibid.